

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-221004 DATE: February 27, 1986
MATTER OF: Ray Camp, Inc.

DIGEST:

1. Protest is timely filed at GAO when it is filed within 10 working days after protester receives notice of adverse agency action on timely filed agency-level protest.
2. In a negotiated procurement, award may be made to a higher priced, higher technically rated offeror as long as the decision to do so is reasonable and in accordance with the stated evaluation criteria. Protester has not shown that it was competitively prejudiced by agency's initial error in calculating protester's total price, where contracting officer and source selection officials reevaluated protester's proposal using correct price and determined that awardee's proposal still represented the greatest overall advantage to the government because of its technical superiority.

Ray Camp, Inc. (Camp), protests the award to J.M. Hart & Associates (Hart) of a contract for professional services involving cadastral survey work in the Ouachita National Forest. The solicitation was issued by the Forest Service, United States Department of Agriculture, under request for proposals (RFP) No. R8-9-85-61N. We deny Camp's protest based on our findings that the agency had a rational basis for preferring the awardee's technically superior proposal despite its higher cost to the government and that the protester was not competitively prejudiced by the agency's computational error in recording the protester's proposed price.

Eight proposals were received by the August 27, 1985, deadline in response to the solicitation, which, as amended, covered 13 items of professional cadastral survey services for the Ouachita National Forest in Hot Springs, Arkansas. The government estimated \$86,613.56 as the cost

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of these requirements. Price proposals were separated and retained by the contract specialist assigned to this procurement, while the technical proposals were given to a Board of Contract Awards for evaluation. This board consisted of the forest engineer as chairman and the forest cadastral surveyor and forest land staff officer as members. After technical evaluation and scoring had been completed and recorded, price proposals were evaluated and recorded. The agency awarded the contract to Hart on September 24, 1985, and notified unsuccessful offerors.

On September 30, a Camp official advised the contracting officer that a \$29,626.75 error had been made by the agency in adding and recording Camp's price. As a result, Camp's price was erroneously recorded as the fifth lowest price offered, when, in fact, Camp had offered the lowest price on all items and its corrected price of \$74,777.75 was \$4,542.12 lower than the awardee's price of \$79,319.87. At this point, the agency reports, the contracting officer conducted a review of the entire evaluation process with the chairman of the Board of Contract Awards at the Ouachita National Forest and the supervisor of the regional land surveyor in the Atlanta Regional Office. On the basis of this review, the contracting officer determined that the price-recording error had no effect on the technical evaluation or Camp's overall competitive placement and, since the award had been made at a reasonable price for the offer which most benefited the government in terms of overall performance consistent with the solicitation, there was no reason to overturn the award or stop work on the contract. Camp was advised of these findings and conclusions on October 3. It filed an agency-level protest on October 15, claiming that it should have been awarded the contract because it was fully qualified to perform and its offer was actually the lowest priced. The agency denied Camp's protest in a letter which was mailed on October 18, following receipt of which Camp filed its protest with this Office on November 4, 1985.

The agency argues that Camp's protest to this Office is untimely because it was not filed within 10 working days of the initial adverse agency action, which it states occurred when the notice of award was received by Camp on September 30, 1985. This is incorrect. There must first exist an agency-level protest before an agency can act adversely to it. There was no protest outstanding when Camp received notice that the contract had been awarded to Hart. Rather, it was the receipt of this notification which provided the basis for Camp's subsequent protest to

the Forest Service. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), provide that when a protest is initially filed with a procuring agency, any subsequent protest to our Office must be filed within 10 working days of initial adverse agency action. BHT Thinning, B-217105, Jan. 16, 1985, 85-1 C.P.D. ¶ 44. This is defined as any action or inaction that is prejudicial to the position taken in the protest filed with the agency. Id.; 4 C.F.R. § 21.0(e) (1985). Here, Camp filed a timely protest with the agency on October 15, which was denied by the agency in a letter mailed on Friday, October 18; and, allowing for the earliest workday delivery on Monday, October 21, Camp's protest to this Office received 10 working days later, on November 4, is timely and for consideration on the merits. 4 C.F.R. § 21.2(a)(3) (1985).

Camp protests that because of the error in adding and recording its proposed prices, the agency made award to a higher priced but technically equal contractor. Noting that it has successfully conducted other cadastral survey projects as the result of competitions similar to this procurement and that the results of such survey work involve quality standards which are very subjective, Camp contends that the agency cannot justify award to a "less experienced, less production-capable firm" at a price exceeding its offer by \$4,542.12. In essence, Camp contends that its proposal provides a greater overall value to the government in both the technical factors and cost areas and, even if there is technical parity between it and Hart for this procurement, the \$4,542.12 difference in proposed costs supports an award to the protester.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the RFP specifies that cost will be the determinative factor. The Communications Network, B-215902, Dec. 3, 1984, 84-2 C.P.D. ¶ 609. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. Stewart & Stevenson Services, Inc., B-213949, Sept. 10, 1984, 84-2 C.P.D. ¶ 268. The procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interests and is consistent with the evaluation scheme set forth in the solicitation. Haworth, Inc., B-215638.2, Oct. 24, 1984, 84-2 C.P.D. ¶ 461.

The RFP in this case explicitly advised offerors of the evaluation criteria and their relative weights, specified that the cost factor would be secondary to the technical factor, and stated that award would be made to the offeror whose proposal was technically acceptable and whose technical/cost relationship was most advantageous to the government. The RFP further specified that award would not necessarily be made on the basis of the lowest price offered or on the basis of technical capabilities which appear to exceed the requirements for successful performance. Therefore, as long as the record demonstrates that there was a rational basis for the decision that technical superiority outweighs additional cost, our Office will defer to the agency's judgment. Electronic Data Systems Federal Corp., B-207311, Mar. 16, 1983, 83-1 C.P.D. ¶ 264.

Although Camp's price was approximately 6 percent lower than Hart's, the record reflects that Hart's proposal received a significantly higher technical score which the contracting officer determined more than offset the price difference between the two proposals. In fact, Hart's technical proposal was rated approximately 22 percent higher than Camp's. For example, Hart's proposal was rated 50 percent higher than the protester's on the evaluation criterion "Technical Approach to the Project and Production Estimate." The agency found that Camp's technical approach did not indicate any use of original survey records to add strength and acceptability to the current survey and that Camp's technical approach generally lacked sufficient detail in its descriptions of corner search methods and surveying measurement procedures. For the evaluation criterion "Direct Supervision by Professionals for the Project"--through which the agency sought greater direct supervision for reduced likelihood of error, greater quality assurance, quicker resolution of onsite problems and a greater level of confidence in the survey work--Camp's proposal showed only 50-percent direct supervision time by the professional land surveyor, while Hart's proposal contained almost 100-percent direct supervision.

The agency concluded that Hart's superior technical approach in terms of level of effort and direct supervision by professionals at once explained and outweighed the \$4,542.12 added cost to the government which Hart's proposal represented. Since the record here shows a rational basis for the agency's decision that Hart's technical superiority outweighed the additional cost, we find no reason to disturb the agency's determination that Hart's

proposal would offer the greatest overall advantage to the government. Although the agency initially made an error in adding and recording Camp's price, Camp's technical proposal was evaluated by the Board of Contract Awards without any knowledge of the price offered by Camp. Moreover, once the error was made known to the agency, the contracting officer, the chairman of the Board of Contract Awards, and the supervisor of the regional land surveyor reevaluated Camp's proposal and the initial determination to award to Hart using the corrected prices and the existing technical scores. As indicated above, they reasonably concluded that Hart's approximately 22-percent superior technical capabilities were indeed worth the approximately 6-percent extra expenditure. See Todd Logistics, Inc., B-203808, Aug. 19, 1982, 82-2 C.P.D. ¶ 157 at 11, 12. In these circumstances, we do not see that Camp was prejudiced by the initial clerical error, and Camp has offered no evidence to the contrary.

Camp also generally contends that since it was awarded a contract based on a nearly identical offer for a contemporaneous cadastral survey in Oklahoma, it was fully capable of performing all quality work required by this solicitation and, therefore, the Board of Contract Awards must have abused its discretion in reviewing the technical proposals for this procurement.

The function of our review is not to determine independently the relative merit of technical proposals, because the evaluation of proposals is properly the function of the procuring agency which must bear the burden of any difficulties resulting from a defective evaluation. Litton Systems, Inc., Electron Tube Div., 63 Comp. Gen. 585 (1984), 84-2 C.P.D. ¶ 317 at 4. We will question a contracting official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 C.P.D. ¶ 607 at 10.

The protester has not shown that the agency's technical judgments are in error, arbitrary or otherwise unreasonable, but only that it believes they are wrong. Mere disagreement with the technical judgments supporting an agency's assessment of its minimum needs and the best methods for accommodating those needs, however, does not carry a protester's burden to prove that the agency's technical conclusions are unreasonable. Rack Engineering Co., B-208615, Mar. 10, 1983, 83-1 C.P.D. ¶ 242.

With respect to Camp's specific contention that it has been awarded other contracts recognizing its superiority to other offerors, the fact is that the Ouachita National Forest has particular minimum needs to be met, so the way that other contracting activities met their own particular needs does not establish that the Board of Contract Awards in this case acted unreasonably. See All-Pro Turf, Inc., B-214339, July 16, 1984, 84-2 C.P.D. ¶ 49 at 6. Furthermore, since the competition for each procurement is unique, the fact that Camp may have been evaluated as the highest rated competitor in another procurement has little or no bearing on Camp's entitlement to award in the present case.

Camp also questions the authority of the Board of Contract Awards at the Ouachita National Forest to perform the technical review. First, the composition of a technical evaluation panel is within the discretion of the contracting agency and, since the protester has not shown fraud, bad faith, conflict of interest or actual bias, we have no reason to question the composition of this board. Haworth, Inc., B-215638.2, supra. To the extent that the protester appears to question the agency's lack of formal source selection procedures within the meaning of Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.612 (1984), the agency reports that it did not use formal source selection procedures because, under Forest Service Procurement Regulations, § 4G-15.612, formal evaluation procedures are optional for negotiated procurements less than \$500,000, such as this one. This action is consistent with FAR § 15.612 which states that formal source selection procedures are generally to be used in high-dollar-value acquisitions. Accordingly, we find nothing improper or prejudicial in this aspect of the source selection process.

Camp also protests that the evaluation process was "hasty" due to the agency's effort to award before the end of the fiscal year and that the award to Hart on September 24 and the prework conference held on September 28 prior to notifying Camp of award prejudiced its ability to protest the award. Concerning the length of time to evaluate offers, the agency, and not our Office, was in the best position to determine the amount of time necessary to conduct a satisfactory evaluation of proposals in this procurement, and the agency believes it devoted sufficient time and effort to the evaluation here. Our Office is concerned only with whether the evaluation was fair, reasonable, and consistent with the evaluation criteria, and we have already found that the evaluation

met this standard. See IMODCO, B-216259, Jan. 11, 1985, 85-1 C.P.D ¶ 32 at 3, 4. Concerning Camp's charge that the award before the end of the fiscal year prejudiced its ability to protest, in view of the fact that Camp was able to file a timely protest, we find no prejudice to Camp in this regard.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel